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State of New Mexico

Susana Martinez
Governor

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184

Dear Ms. Dortch:

In 2014, the Federal Communications Commission adopted rules to modernize the E-rate program and ensure that the program is leveraged to expand affordable access to high-speed broadband.[1] "Acknowledg[ing] that modernizing a program of this size and scope [could not] be accomplished at once," the Commission recognized that it would "continue to seek public input and additional ideas to bring 21st Century broadband to libraries and schools throughout the country."[2] In response to the ongoing rulemaking in this proceeding and with the benefit of almost two years of implementation experience across various states, I submit this letter to provide such input. Specifically, I am requesting that the Commission build upon the initial success of the program and expand its reach by (1) extending its suspension of the amortization policy, and (2) increasing the discount rate for non-recurring construction costs where states provide matching funds.

Consistent with the Commission's stated goal of "ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries,"[3] the modified E-rate program has allowed school districts to bring high-speed

[1] *See In re Modernizing the E-rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-184 (rel. July 23, 2014) ("*E-rate Modernization Order*"); *see also In re Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, Second Report and Order and Order on Reconsideration, WC Docket Nos. 13-184 & 10-90 (rel. Dec. 19, 2014) ("*Second E-rate Modernization Order*").
[2] *E-rate Modernization Order* ¶ 267.
[3] *Id.* ¶ 26.

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broadband to areas where it was sorely needed to improve and expand educational opportunities for students and their communities. The rules implemented by the Commission in 2014 successfully catalyzed action during the most recent E-rate cycle, prompting states and school districts to work together to bring fiber optic connections to schools experiencing severe bandwidth constraints. In particular, two of the program modifications—the suspension of Universal Service Administrative Company's (USAC's) policy requiring E-rate applicants to amortize upfront special construction charges over multiple years and the availability of additional discounts when states match funds for high-speed broadband construction—have spurred school districts and states, in partnership with service providers, to invest in fiber build projects that almost certainly would not have been completed in the absence of the Commission's efforts. As a result of these changes, which were adopted with the specific target of "closing the rural connectivity gap and increasing affordable high-speed broadband connections to schools and libraries,"[4] many largely rural schools across the country requiring infrastructure updates will now have fiber optic connections and high-speed Internet access.

However, despite the overall success of the modernized E-rate program, and action by states to establish fiber matching funds, many schools and school districts across the country have not been able to leverage the program to connect to affordable high-speed broadband. This is because, as the Commission recognized when it adopted E-rate modernization, the costs associated with constructing fiber optic networks are significant and those costs must be paid during construction, which precedes the commencement of broadband services under an E-rate eligible contract. Moreover, even with the discounts provided through the modernized E-rate program, the upfront, non-recurring costs of extending fiber optic networks are simply too high for most school districts to bear.[5] In states across the country a pattern has become clear – cash-strapped districts do not have the resources to provide their share of the upfront construction costs required to extend fiber optic networks to schools without high-speed broadband.[6]

In order to ensure that the largely rural schools and school districts requiring upgrades are not left without high-speed Internet access as a result of their inability to fund a significant upfront infrastructure investment, I suggest two adjustments that will have a significant impact on the ability of schools to capitalize on the beneficial changes the Commission has made to the E-rate program.

First, I propose that the Commission extend the suspension of USAC's multi-year amortization policy for non-recurring construction costs for an additional two years.[7] Until the Commission suspended it as part of the *Second E-rate Modernization Order*, USAC had

[4] *Second E-rate Modernization Order* ¶ 12.

[5] For example, during the most recent E-rate cycle, the seven school districts in New Mexico that required significant upfront investments to bring fiber to their schools averaged $355,000 per school and $1.63 million per district in upfront costs. The district share of the cost per school represented an average of 7.1x the district's total annual cost of broadband services.

[6] In many cases, schools requiring fiber construction are rural or high-poverty schools within a lower discount rate district that are no longer able to use a school specific discount rate following the Commission's decision to use district-wide discount rates.

[7] *See id.* ¶¶ 18-21.

a policy that required E-rate applicants to amortize special construction charges of more than $500,000 over a period of at least three years, meaning that even if an applicant had to make a large upfront expenditure on a construction project, it had to recover the E-rate supported portion of that expenditure over the course of a number of years. That policy was initially developed based on a concern that "large upfront payments for non-recurring services could create a critical drain on the Fund, thereby limiting the number of schools and libraries that would receive funding."[8] But as the Commission acknowledged, these upfront payments were not actually burdening the Fund prior to the Commission's E-rate reforms, and the amortization policy (among other rules) served to prevent many schools from "undertak[ing] large construction projects" and from "choosing the most cost-effective options for increasing the high-speed broadband connections."[9] Accordingly, the Commission suspended USAC's policy in order to "give applicants the flexibility to plan large construction projects knowing they can recover the E-rate supported portion of any non-recurring costs upfront."[10] The Commission expressed hope that "removing this potential barrier to infrastructure investment" would "encourag[e] construction of high-speed connections to schools and libraries, [which] is a crucial part of our effort to ensure that all schools and libraries achieve our connectivity targets."[11] Extending the suspension of the amortization policy for an additional two years will give states and school districts sufficient time to take advantage of this opportunity to bring high-speed broadband to their schools. Many states are actively working to establish fiber matching funds with the hope that funds will be in place for the 2017-2018 E-rate cycle. Because many school districts will be able to begin the multi-year fiber construction process only when matching funds are available and existing contracts are set to expire, extending the suspension of the amortization policy will provide time for many more schools to avail themselves of this opportunity to obtain high-speed broadband. Extending the suspension period for the policy would be consistent with the Commission's express recognition that it would evaluate the impact of suspension to "determine the best course forward for subsequent funding years."[12] Conversely, allowing the policy to go back into effect after funding year 2018 would discourage schools from pursuing "efficient investments in infrastructure, including the deployment of fiber."[13]

Second, I propose that the Commission provide a 90% discount for non-recurring construction costs to bring fiber optic connections to schools that do not currently have such connections when states provide 10% of the construction costs, regardless of the school district's actual discount rate.[14] In 2014, the Commission resolved to increase an E-rate applicant's discount rate up to an additional 10% in order to match state funding, noting that "states are well situated to bolster high-speed broadband construction to schools and libraries" and that "this additional funding will encourage states to identify high-speed connectivity gaps – those schools and libraries that do not have access to affordable high-

[8] *Id.* ¶ 18.
[9] *Id.* ¶ 11; *see also id.* ¶ 19 (noting that "USAC's current amortization policy may actually increase the total costs borne both by applicants and the program").
[10] *Id.* ¶ 17.
[11] *Id.*
[12] *Id.* ¶ 21.
[13] *Id.* ¶ 19.
[14] *See id.* at ¶¶ 55-59.

speed connectivity – and address them."[15] Recognizing the importance of bridging the connectivity gap in schools and enabling digital learning in all classrooms, a number of states have responded to the Commission's E-rate reforms by creating matching funds that school districts can leverage to undertake network expansions. However, due to the high cost of extending fiber optic networks, cash-strapped districts with lower discount rates often cannot afford their share of construction costs even with state funds and this additional 10% discount.[16] Providing a 90% discount on non-recurring costs for schools lacking fiber optic connections when states offer to make up the remaining 10% of the costs would ensure that many more schools can affordably connect to high-speed broadband. Increasing the discount rate to 90% will also incentivize states to establish and expand matching funds for schools seeking fiber optic connections (and assist governors in galvanizing their legislatures to allocate such funds) by providing an opportunity to make a one-time investment that will enable all schools across the state—including those that cannot afford to make any upfront payment—to secure high-speed broadband infrastructure.

The proposed changes will provide the time and resources for states and school districts to work with service providers to extend fiber optic networks to schools that need them. By improving the ability of schools in rural and economically depressed areas to obtain the access to high-speed broadband already enjoyed in regions where fiber optic networks have been deployed, these adjustments will bring the Commission closer to its goal of making affordable high-speed broadband available to all students. States have answered the Commission's call to establish fiber matching funds to "ensur[e] affordable access to high-speed broadband sufficient to support digital learning in schools."[17] To guarantee that these funds have the desired impact, I hope that the Commission will act swiftly to adopt these proposed changes to the E-rate program.

Sincerely,

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Governor

[15] *Id.* at ¶¶ 56, 57 (increasing discount rate for non-recurring construction charges up to an additional 10% in order to match state funds and remarking that Commission "may consider increasing the maximum match" depending upon its impact on the E-rate program).
[16] Moreover, to the extent that school districts have capital funds available, they need these funds to pay for the match required to deploy robust wired and wireless networks in their schools using E-rate Category 2 funding and to invest in devices and other resources needed to deliver digital learning once sufficient connectivity is available.
[17] *Id.* ¶ 10.